

CV

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIV.

ORIGINAL FEB 15 P4:25

APPLETON PAPERS, INC.
and NCR CORPORATION,

Plaintiff(s),

JON Z. S. [unclear]
CLERK

v.

Case No. 08-C-16
Green Bay, Wisconsin
February 6, 2008
1:27 p.m.

GEORGE A. WHITING PAPER
COMPANY,

Defendant(s).

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

McDERMOTT WILL & EMERY LLP, by **LINDA M. DOYLE**,
Attorney at Law, 227 W. Monroe Street, Suite 4400,
Chicago, Illinois 60606-5096, appearing on behalf
of Appleton Papers, Inc., a plaintiff.

GASS WEBER MULLINS LLC, by **J. RIC GASS**, Attorney at Law,
309 N. Water Street, Suite 700, Milwaukee, Wisconsin
53202, appearing on behalf of NCR Corporation, a
plaintiff.

SIDLEY AUSTIN LLP, by **J. ANDREW SCHLICKMAN**, Attorney at
Law, 1 S. Dearborn Street, Chicago, Illinois 60603,
appearing on behalf of NCR Corporation, a plaintiff.

DiRENZO & BOMIER LLC, by **PHILIP A. MUNROE**, Attorney at
Law, Two Neenah Center, Suite 701, PO Box 788, Neenah,
Wisconsin 54957-0788, appearing on behalf of George A.
Whiting Paper Company, a defendant.

Pages 1 though 40

39

P R O C E E D I N G S

THE DEPUTY CLERK: The Court calls
Case No. 08-16, Appleton Papers and NCR Corporation
v. George A. Whiting Paper Company, for a status
conference.

May I have the appearances, please.

MR. GASS: For the plaintiff, Ric
Gass and Andy Schlickman.

MR. MUNROE: For Whiting Paper,
Philip Munroe.

MS. DOYLE: And Linda Doyle
appearing as well, by telephone.

THE COURT: You made it up here.

MR. GASS: Yes.

THE COURT: Mr. Gass, you were
supposed to be in Florida, weren't you?

MR. GASS: Right. It was a trek
yesterday, Judge, ending at 1:00 this morning
arriving here. So...

THE COURT: Well, I'm honored.
That much effort.

(Laughter)

THE COURT: Okay, and Ms. Doyle,
you flew in this morning as I understand?

MS. DOYLE: I did, from New York,

1 and I think I got lucky. I seem to be the only
2 one. My earlier flights were canceled, but I did
3 manage to get in and get to my office about 10
4 minutes ago.

5 THE COURT: And is Milwaukee getting
6 its second foot of snow, is that what you're on
7 now?

8 MS. DOYLE: Yes.

9 THE COURT: I know they closed the
10 Federal court down there. It sounds like much
11 was closed, but --

12 MS. DOYLE: Yes, it is closed, and
13 schools were ending as well.

14 THE COURT: Okay. Well, as the
15 parties here can tell you, we're bereft of snow.
16 The temperature has dropped, it's a little windy,
17 but other than that, everything is working.
18 So...

19 MR. SCHLICKMAN: Well, Your
20 Honor, unfortunately I have to drive back through
21 all that to get to Chicago tonight --

22 MS. DOYLE: It was 50 degrees in
23 New York, so it's quite a shock.

24 THE COURT: Mr. Schlickman is
25 looking forward to his trip to Chicago too.

1 Maybe you want to try one of our hotels, yes.

2 Well, this was put on as a status conference.
3 I think it was at your request, Mr. Gass, right?

4 MR. GASS: It was.

5 THE COURT: And I'm not clear
6 exactly -- I know you've sent us information
7 concerning -- it looks like what could be a
8 related action that was the subject of a consent
9 decree in front of Judge Adelman?

10 MR. GASS: Yes.

11 THE COURT: And I did mention it
12 to him, and he said, "Yep."

13 (Laughter)

14 THE COURT: We thought maybe we
15 would see a Motion to Consolidate or some sort
16 of indication as to what the significance and
17 what action -- how they're related.

18 MR. GASS: Okay. If it's okay
19 with you, Andy and I would tag-team you this
20 afternoon.

21 THE COURT: That's fine. I want
22 to make sure, though, that Ms. Doyle can hear.
23 Are you picking it up all right?

24 MS. DOYLE: Yes, I am.

25 THE COURT: Okay. Let us know --

1 we're in the process of modifying our phone system,
2 and we're still on an old one that every now and
3 then cuts in and out. So let us know if you can't
4 hear anything.

5 MS. DOYLE: Okay.

6 THE COURT: Go ahead, Mr. Gass.

7 MR. GASS: Okay. Judge, what I'll
8 try and do is give you a thumbnail of what I think
9 would be a workable procedure going forward
10 because, as you're going to learn, this case is
11 an unusual animal.

12 It's been pending in various ways into
13 decades now, and it involves obviously a very
14 significant environmental issue, the Fox River.

15 Having grown up here, we all know how
16 important that is to this state, and it ultimately
17 will be one of the largest environmental dredging
18 clean-ups in history.

19 I come late to the issue. Andy has been
20 living the case for years, and so the way we
21 thought we could help you best today is if I gave
22 you my take on procedurally how to get the case
23 off the ground, and then Andy will add on the
24 complexities that are involved with the issues
25 in the case.

1 There were, over the years, three or four
2 consent decrees relating to small discrete
3 parts of the clean-up. And the river, in terms of
4 clean-up, is divided into operating units.

5 In the last of those consent decrees, all
6 of which were handled by Judge Adelman, a party
7 by the name of Glatfelter has moved to reopen part
8 of it.

9 And this case involves the equitable
10 allocation of contribution of all the potentially
11 responsible parties for the clean-up costs.

12 So what Glatfelter is getting involved in
13 in attempting to reopen part of that consent
14 decree is related, on the substance and the merits,
15 with this case.

16 And the issue of potential consolidation
17 is obviously one that should be looked at closely
18 as we start to go forward here.

19 The two things that relate to getting this
20 case off the launching pad are that the parties
21 -- the major -- major isn't the right word. The
22 parties that have been focused upon for clean-up
23 by the Government have been attempting to settle
24 it with extensive mediation. And that mediation
25 is going to finish the end of this month.

1 The second thing that is background is that
2 for that mediation to happen and for working with
3 the Government on the clean-up merits, the type of
4 clean-up, the cost, et cetera, the parties all
5 entered into Standstill and Tolling Agreements.
6 Those agreements will expire by the end of this
7 month.

8 So this action was filed to start the
9 process. The things that would interfere with
10 it going forward will be done at the end of the
11 month, and at that point, it will be appropriate
12 to get all parties added to this litigation.

13 We filed one motion, which you granted, to
14 add Glatfelter. A motion was filed today, just
15 coming through the ECF system as we speak here,
16 to add the other parties.

17 And so our suggestion procedurally is to try
18 and make the process of getting all the appropriate
19 parties in front of you and get us to a scheduling
20 conference.

21 We'd like to suggest the following: that
22 there be an order that the rest of the parties can
23 be added without having to do individual motions
24 for leave of court and that we have all of the
25 parties that we're aware of added by the end of

1 February.

2 THE COURT: Now are there more
3 parties than are included in this motion?

4 MR. GASS: Yes.

5 THE COURT: Insurers or --

6 MR. GASS: No. The Government
7 focused on six or seven of the parties. But there
8 are other individual papermills and/or waste
9 treatment operations.

10 THE COURT: How many in all?

11 MR. GASS: Andy?

12 MR. SCHLICKMAN: I think
13 approximately 30.

14 THE COURT: Okay. Are they all
15 involved in the mediation?

16 MR. SCHLICKMAN: No, they aren't.
17 The six or seven parties that the Government has
18 focused on in the past are the ones that have
19 been participating in that mediation process,
20 Your Honor.

21 THE COURT: Okay. Go ahead,
22 Mr. Gass. You can continue.

23 MR. GASS: So the plan -- the kind
24 of a schedule that we would see is that we would
25 add, under a general grant of leave to amend, all

1 of the parties that we think should be in by
2 the end of February for kind of these major
3 parties that the Government has focused on.

4 And we would have them added by March 4th,
5 at the latest, and then all of those parties
6 -- I think it would expedite the process if they
7 all had a responsive pleading deadline of no
8 later than March 24th.

9 And we would then orchestrate the
10 communication with all of those parties to develop
11 a proposed scheduling order that would be submitted
12 to you no later than April 14th. And I think those
13 dates would fit with what the rules provide.

14 The only three confounders to having this case
15 ready for you with a proposed scheduling order by
16 the middle of April -- the three confounders are
17 these: one, the parties that we add may want to
18 add other parties, but I think we can deal with
19 that in the scheduling conference order.

20 The second issue is that because of the
21 number of parties involved and the fact that
22 these are major corporations, there are some
23 conflicts issues in terms of retaining counsel.

24 We believe that all of the parties that
25 the Government has focused on so far have

1 national counsel selected, and so there's no
2 problem there with conflicts. But we're going
3 to run out of local counsels in Wisconsin because
4 of conflicts.

5 So if your order provided that, for all
6 future amended pleadings adding parties, that a
7 copy of the scheduling order had to be part of
8 that packet, it would underline for the new
9 parties the urgency of getting their local counsel
10 selected.

11 The only other confounder in terms of getting
12 us off the launching pad is that as you -- I can
13 see you thinking about the possibility of
14 insurance defendants coming in. That's possible
15 for some of the smaller players, but I believe
16 that most of the parties that have been focused
17 on by the Government either already have their own
18 insurance litigation commenced -- in fact, one of
19 the parties is going to go to trial next week
20 across the street.

21 THE COURT: I'm summoned for jury
22 duty.

23 (Laughter)

24 THE COURT: So far I've not been
25 excused.

1 MR. GASS: Well, you have a conflict
2 now.

3 THE COURT: I thought I did before,
4 but Judge Zuidmulder (phonetic) is a strict Judge.
5 Are any of you involved in that case?

6 MR. GASS: No, we are not.

7 THE COURT: Okay. How does an
8 insurance issue end up -- and multiple insurance
9 -- end up in a jury trial?

10 MR. GASS: Oh --

11 THE COURT: Oh, I don't know. It'll
12 be interesting. They're talking four to six weeks
13 or something.

14 MR. GASS: Right. Right, yes.

15 So at least from the parties that the
16 Government has focused on that will come in to
17 this case, either their litigation has been
18 commenced or settlements have been reached.

19 But no guarantee that on some of the smaller
20 players, they might say, "Hey, we've got to get
21 our insurer in here," but I don't see that as a big
22 confounder.

23 When we get to the actual schedule of laying
24 out dates, the Court should be aware that there
25 will be a very big focus on smaller players in

1 attempting to do settlements of the smaller people.
2 So that ultimately it would be our hope that when
3 we get down to having to try the allocation in
4 front of you, you will have a manageable number
5 of players that you'd be dealing with.

6 THE COURT: But it would still most
7 likely require a courtroom larger than this?

8 MR. GASS: Yes.

9 THE COURT: This is a case that
10 probably should be heard in the Milwaukee
11 courthouse. I can go down there. I'm not saying
12 that means it would be transferred, but unless
13 things move much more quickly toward construction
14 of a new courthouse here, it does appear this is
15 the kind of case --

16 MR. GASS: It is --

17 THE COURT: -- that would be handled
18 down there. You foresee, though, that this would
19 require a trial? This is not going to be a
20 motion --

21 MR. GASS: No.

22 THE COURT: -- disposed of by motion
23 in your view?

24 MR. GASS: No.

25 THE COURT: And how many parties do

1 you think will end up and how long down the road
2 a trial and how long a trial? Have you given those
3 matters any thought or is that really getting way
4 ahead of the things?

5 MR. GASS: Oh, no. No. We have
6 thought that out, and Andy knows the facts and the
7 players better than I do. So...

8 MR. SCHLICKMAN: Well, Your Honor,
9 first of all, you know, with respect to the number
10 of parties that would be presumably still in the
11 case at that point, you know, that will turn, I
12 think, on some of the discovery that's taken.

13 Clearly there are parties who discharge
14 PCBs to the river that are smaller than some of
15 the other parties. And as Mr. Gass indicated, we
16 would make every effort to take some focused
17 discovery earlier in the case; try to verify that
18 that is, in fact, the case; that there are smaller
19 parties and see if we can --

20 MS. DOYLE: This is Linda Doyle.
21 I can no longer hear.

22 THE COURT: Speak a little more
23 directly into the microphone and she'll pick it
24 up.

25 MR. SCHLICKMAN: I'm sorry, Linda.

1 I'm getting as close to the microphone as I can
2 here. Does that sound better?

3 MS. DOYLE: Yes.

4 MR. SCHLICKMAN: With that caveat,
5 you know, that discovery will probably tell us,
6 you know, who will be in for the long run and who
7 may get out early. I would imagine that this is a
8 case, once it goes to trial -- I think the issue is
9 such that it won't be disposed of on motion; it
10 will go to trial. It's the application of
11 equitable factors to determine allocable shares
12 of a large sum of money.

13 We'd be talking probably 10 to 12 parties at
14 trial is my best guess based on what I know right
15 now.

16 Just a little bit of background. This is a
17 case that involves activities that occurred in
18 the 1950s, 1960s, 1970s in terms of the actual
19 discharges of PCBs to the river. And as you're
20 well aware, there have been a lot of activities
21 over the last 15-20 years on just how to address
22 the problem from the regulatory EPA perspective.

23 Because there's not a lot of direct evidence
24 of PCB discharges, Your Honor, there's going to
25 have to be a fair amount of reconstruction of

1 activities that occurred in that timeframe.

2 There's going to have to be -- once the
3 facts are reconstructed, there's going to have to
4 be expert analysis of what those facts meant for
5 actual discharges into the river. There's going
6 to be expert testimony about once PCBs were
7 discharged, how they moved in a river system, how
8 they ended up in the various areas that are to be
9 cleaned up, which is to say, you know, we'll have
10 to sit down with the other counsel and work out a
11 proposed scheduling order.

12 But, you know, my view right now is that we're
13 looking at both fact and expert discovery --
14 probably about two years of discovery before the
15 case would be ready for final pretrial work and
16 putting pretrial orders together.

17 So our best guess would be, you know, if
18 discovery really started in earnest in April or
19 May, we're probably looking at a trial date in the
20 latter half of 2010.

21 THE COURT: And a trial of a number
22 of weeks or you think months?

23 MR. SCHLICKMAN: I would like to
24 think a number of weeks. Again, sitting here right
25 now, it's going to be a lengthy trial. I would

1 hope that through stipulations and whatnot, we
2 could do that in a manageable period of time.

3 Again, my best guess, six to eight weeks here,
4 but I could see things that could occur that might
5 make it longer than that.

6 THE COURT: Is now a good time to
7 see what Ms. Doyle and Mr. Munroe's views are
8 or has this been a discussion that's been going on
9 between those parties that are already in the case?
10 Mr. Munroe?

11 MR. MUNROE: Your Honor, this
12 morning Mr. Schlickman and I had a very brief
13 conversation --

14 THE COURT: Are you hearing,
15 Ms. Doyle?

16 MS. DOYLE: No, nothing past a
17 good morning.

18 THE COURT: Is your microphone
19 on?

20 MR. MUNROE: The green light
21 is -- one second. It is now.

22 THE COURT: That helps too.

23 MR. MUNROE: All right.
24 Mr. Schlickman and I spoke for maybe five or
25 ten minutes this morning, and he sort of

1 outlined the basic idea of getting the parties
2 added by the end of this month and have
3 responsive pleadings by the end of March.

4 So I haven't had a lot of time to think
5 about this. And my client is a very, very small
6 player in this matter according to the information
7 I've been able to obtain. The documentation shows
8 that over the course of three years, we discharged
9 something on the order of 1.8 pounds of PCBs into
10 Little Lake Butte des Morts.

11 But in any event, as I look at what the
12 deadlines are that they're proposing -- that have
13 been proposed here, I certainly have no concern
14 about when they want to add the parties.

15 Their suggestion that responsive pleadings
16 be filed by everybody by March 24 I think is also
17 -- that's okay. But the schedule doesn't account
18 for any crossclaims that may be filed or
19 counterclaims that may be filed in the first round
20 of responsive pleadings and the time it will take
21 to respond to those.

22 I would assume, if we're talking contribution
23 actions, there will inevitably be crossclaims and
24 counterclaims as well. And those will need
25 responses before we just sit down and start trying

1 to prepare a scheduling order.

2 And Whiting is one of the parties that
3 Mr. Gass talked about as presenting a possible
4 confounder with respect to insurance coverage.
5 I think in our particular case when we got the
6 complaint, we had to take a look at both the
7 policies that are currently in effect and those
8 that were in effect at the time of the alleged
9 discharges.

10 And so we can't even find some of those
11 old policies, but we know who the carriers are.
12 And we've tendered the defense to the carriers
13 that were on the risk back at the time that
14 these discharges supposedly occurred.

15 And I can see, because of the time that's
16 involved and these insurance companies having to
17 go back and trying to recreate their files or
18 locate the policies and verify the coverage,
19 that resolving even whether or not insurance
20 companies are going to accept a tender of defense
21 and to what extent, there will need to be
22 insurance -- you know, litigation over insurance
23 coverage is probably going to take at least month
24 and maybe two to finish sorting out.

25 Under the Wisconsin rules, I would assume that

1 the duty to defend in Wisconsin is the same as it
2 is here (unintelligible) in Federal court, and
3 many of those companies may very well assume the
4 tender and then file summary judgment motions to
5 have -- in this case, to have coverage
6 determinations made.

7 And I just bring this up because that's
8 probably going to have some effect on the
9 scheduling. And you're probably going to be
10 presented with Motions to Stay proceedings on
11 the merits pending the outcome of the insurance
12 disputes.

13 THE COURT: Ms. Doyle, do you wish
14 to add anything on that?

15 MS. DOYLE: Hello?

16 THE COURT: Yes. Ms. Doyle, do
17 you wish to add anything?

18 MS. DOYLE: Oh, I'm sorry. All
19 I got was Ms. Doyle. No, I don't, Your Honor.
20 Unfortunately, I haven't had a chance to talk to
21 counsel before this call, and so this is the first
22 time hearing it. And I've talked to my
23 partner in Boston who is representing the client.

24 But my general reaction is I don't see any
25 objections to the schedule that's been outlined,

1 but certainly we have to talk to our client.

2 THE COURT: Mr. --

3 MS. DOYLE: I don't see -- we,
4 unfortunately, all didn't have an opportunity to
5 talk before this call.

6 THE COURT: Go ahead, Mr. --

7 MS. DOYLE: I know Andy had called
8 me, but I was traveling back from New York, so
9 I wasn't able to return your call.

10 THE COURT: Go ahead, Mr.
11 Schlickman, if you want to comment on Mr. Munroe's
12 concerns. And why the urgency here?

13 MR. SCHLICKMAN: Well, let me --
14 I'll specifically address his comment, and I'll
15 answer the urgency question.

16 I think there's a possibility what Mr. Munroe
17 describes could happen. Our view here is that
18 given some events I'll describe in a minute, it's
19 time to start moving this type of litigation
20 forward because the parties need to get some sort
21 of resolution as to what the share issues are
22 because lots of money needs to be spent in the near
23 term to begin work at the site that EPA is
24 requiring.

25 We propose the schedule that Mr. Gass

1 outlined because we want to move this forward.
2 We don't want to move it unnecessarily quickly, and
3 we don't want to move it unnecessarily slowly. We
4 want to move it in the right way.

5 And I would expect that if Mr. Munroe is
6 correct, that we see crossclaims and counterclaims
7 and issues having to do with, you know, insurance
8 defense questions, the parties can talk about that
9 at the scheduling conference, you know, we
10 contemplate occurring sometime in the latter part
11 of March.

12 And it may be that we need the Court's
13 assistance, you know, a scheduling conference
14 shortly after that time. But I think our view is
15 let's at least see where we're at at that point,
16 sit down and talk about it. If we need the Court's
17 assistance, we can let you know.

18 On the urgency question, you know, I
19 personally have been dealing with the Fox River
20 matter since 1995, almost 13 years now, and I've
21 told some people in some respects, you know, this
22 matter is just beginning in this sense.

23 The EPA and the State of Wisconsin issued an
24 order back in November because they were not
25 satisfied with how settlement discussions had been

1 progressing, requiring the seven or eight parties
2 they had been focusing on to start doing the work
3 and start doing the work right away in the river.

4 Things had been moving forward in that
5 direction, but they really tried to jumpstart it.
6 And we've been required by this order, which they
7 have the authority to issue and which there's
8 fairly drastic consequences if you don't comply
9 with it, they're requiring work that is going to
10 cost hundreds of millions of dollars over the next
11 several years and even in the near term, tens, if
12 not hundreds, of millions of dollars.

13 And it's at the point now where if the parties
14 cannot voluntarily decide how to share these rather
15 substantial costs, there's going to have to be a
16 decision by this Court setting those shares.

17 And unfortunately we may have to wait two
18 or three years to get that decision, but given
19 that order and given some other developments, you
20 know, we feel this is the time.

21 If the Court would just allow me a couple more
22 minutes of comments, I'd like to comment on the
23 Glatfelter issue, the other proceeding. What
24 Glatfelter has done is once this order came out
25 requiring work in the river, you know, it sought

1 to reopen a consent decree proceeding that was
2 closed to, in essence, have a hearing on some of
3 its liability defenses, the same defenses that
4 would be relevant to this case, this allocation
5 case.

6 And it proposed a case management order to
7 Judge Adelman that would limit that hearing just
8 to the parties on the consent decree. There are
9 two private parties on the consent decree and
10 two governmental parties. NCR would not be able
11 to participate in that proceeding if the motion
12 were granted.

13 We feel that this is the case where the
14 allocation should be decided with all the parties
15 in it, which is why we brought that case. And it's
16 our view that a consent decree proceeding, which
17 was really just a vehicle for entering a consent
18 decree that set forth the terms and conditions
19 of doing some work in the river, is not the proper
20 vehicle for dealing with the allocation issues,
21 which is why we've made no effort to consolidate
22 the cases. We really think this case alone is the
23 correct one.

24 There was the order from EPA. There was
25 Glatfelter's effort essentially to try to litigate

1 these issues without the other parties. That had
2 some real motivation for us bringing this
3 litigation at this time too because we wanted the
4 Courts to know -- Judge Adelman to know that the
5 client felt they did have another forum in which
6 to litigate its issues and a more proper forum
7 than that consent decree.

8 The other reason behind the urgency of all
9 this is, frankly, we've made reference to the
10 mediation, we've made reference to settlement
11 discussions. There have been settlement
12 discussions on and off over the last four or five
13 years in varying contexts with varying parties --

14 MS. DOYLE: This is Linda Doyle.
15 I'm sorry, but I can no longer hear.

16 MR. SCHLICKMAN: I'm sorry, Linda.
17 We've never reached a resolution on
18 anything, and we do have some more mediation
19 sessions scheduled. I have to say we're not
20 optimistic that we're going to make any more
21 progress than we have over the last several
22 months.

23 So it's those factors together that have
24 converged to -- this is why now's the time to
25 do it, and given the expenses we're going to be

1 incurring over the next several years, why it's
2 important to move this forward and not just let it
3 sit for a while.

4 THE COURT: Tell me about the
5 litigation before Judge Adelman and how is this
6 separate. I mean, if there are other parties
7 that should be in that litigation, wouldn't you
8 just normally add other parties or how old is
9 that? And if --

10 MR. SCHLICKMAN: Well, it's a
11 consent decree that was lodged and entered by
12 Judge Adelman, I believe four or five years ago --
13 I think 2003.

14 It was an action brought by the Government.
15 After the settlement had been negotiated, the
16 consent decree to do the work -- and it's to do
17 the work in one part of the river, the area known
18 as Little Lake Butte des Morts, and it's referred
19 to as operable unit one. So the geographic focus
20 of the consent decree is just that part of the
21 river.

22 The only two defendants are Glatfelter and
23 another company called WTM1, used to be known as
24 Wisconsin Tissue. There were no other parties of
25 the 30 I mentioned before that are involved in

1 that case, and the case is over.

2 I mean, the consent decree was entered. The
3 Court retained jurisdiction over the consent
4 decree in case there were issues about the clean-up
5 as the work unfolded. But it was not a case that
6 was intended to litigate the allocation questions,
7 you know, what each party's share should be for
8 the clean-up of OUI and the rest of the river.

9 This case that we have brought is designed to
10 do that. It's litigation among the private parties
11 to determine the share. The Government is not a
12 party to this case. It's possible that one agency
13 of the United States will be a defendant to this
14 case because of activities they undertook on the
15 river.

16 And it's also the Justice Department of the
17 United States has vehemently opposed the reopening
18 of the consent decree.

19 There's sort of two issues that Judge Adelman
20 has before him: number one, should the consent
21 decree even be reopened. Is it proper to reopen
22 it, and is it being used for some sort of
23 improper purpose?

24 If he decides that issue, that it should be
25 reopened, then there's a question of, you know,

1 what type of management -- case management order
2 he should enter in that proceeding to deal with
3 the issues that Glatfelter has raised.

4 So there's a chance -- and from my
5 perspective, there's a good chance that that case
6 is going to go nowhere; that it won't be reopened,
7 and then we'll be left with this case which has,
8 you know, been, in my view, designed to really
9 address the full array of allocation issues that
10 the parties need to deal with here to sort out
11 what the proper share should be.

12 MR. GASS: Judge, a couple of
13 things. Amplifying on what Andy just said, that
14 case in front of -- the consent order in front of
15 Judge Adelman involving PCB contamination of
16 operating unit one, OUI, if Glatfelter were to
17 reopen that, it gets into the messy intertwining
18 of issues of did those PCBs just stay in OUI or
19 did they, over the years, migrate to two, three
20 and four.

21 What's in front of you is the global --
22 who's responsible in what percentage for every one
23 of those operating units. So you have, at the
24 end of the day, that global allocation. And so
25 hopefully Judge Adelman will agree with the

1 Government it's not appropriate to reopen it, and
2 it is not appropriate to have just a partial
3 allocation done with one party relative to one
4 operating unit when really the big question is all
5 of them.

6 The second thing I wanted to comment on was
7 one of Mr. Munroe's comments that there would be
8 crossclaims and counterclaims. In this particular
9 set of circumstances, those crossclaims and
10 counterclaims will in no way be a
11 side show.

12 THE COURT: The whole thing is the
13 apportionment.

14 MR. GASS: Exactly.

15 THE COURT: So they're -- not even
16 really necessary to make a crossclaim in the
17 sense of what you're seeking is an
18 apportionment.

19 MR. GASS: Exactly. Right on point.

20 The last comment was whether the insurance
21 carriers might move to stay, et cetera. I know,
22 from having done some recent research that you've
23 written on that, Judge Crabb has written on it
24 also, and I think, at least in Judge Crabb's case,
25 she did not stay because of the unique

1 circumstances of the case.

2 THE COURT: I know it's
3 discretionary. But it does put the insurers,
4 given Wisconsin law, in some very difficult
5 positions, I know, if I don't stay. But I know
6 it says, in Federal courts in particular, we have
7 a fair amount of discretion.

8 MR. GASS: Right, and my ending
9 comment on that was that's an issue to take up
10 at the scheduling conference if the insurance
11 carriers really do appear and do that.

12 THE COURT: And I take it by
13 entering this order, I mean, if I go along with
14 this and grant the Motion for Leave to Amend and
15 also grant authority to add other parties on or
16 before whatever date, add the parties by March 4th
17 without further order, without requiring you to
18 seek further leave of the Court, and then requiring
19 responsive pleadings by the 24th, all of these
20 objections and defenses can be raised, including if
21 someone thinks this action doesn't even belong
22 here, or that really this is -- whether it's some
23 sort of claim preclusion or res judicata or some
24 argument that somehow Judge Adelman's action is the
25 operative one or along those lines, those issues

1 can be raised -- I can address those later.

2 It seems to me that if there are difficulties
3 with this in terms of fairness and prejudice to
4 other parties, I'll hear about it, and a better
5 way to resolve it might be to try to address it
6 as it comes up. At least this will ensure that
7 those issues get raised in a timely manner.

8 MR. GASS: Correct. Yes.

9 THE COURT: All right. Mr. Munroe
10 or Ms. Doyle, anything else? Mr. Munroe?

11 MR. MUNROE: I'm making I think --
12 Whiting Paper is in the case. Whiting Paper has
13 an extension, and Mr. Schlickman has agreed that
14 if you set this order up, that our time to answer
15 will be extended to March 24th as well.

16 So I'm sort of making observations here,
17 I think more -- not as an advocate. First of
18 all, let me put it to you this way. Whiting
19 Paper was approached probably four or five years
20 ago to enter into a Standstill Agreement similar
21 to the one that has been described here, and
22 Whiting Paper did not do that and heard nothing
23 further about this litigation until it was served
24 with the summons and complaint in early January.

25 Now it seems to me that there are probably

1 going to be other parties, and I don't know if
2 there are. And once we got this pleading, they
3 came to me because I've done work for them
4 before and said, "What are we dealing with here?"

5 And quite frankly, I'm probably just interim
6 counsel until either the insurance company accepts
7 the tender of defense or declines and then we hire
8 somebody who has more experience in this type of
9 law, even for the purposes of pleading.

10 Now if there are other small parties who are
11 in the same situation as Whiting, they may have the
12 same issues and problems, trying to answer timely
13 -- I mean, I recognize once they're served, they
14 have 20 days, and if they don't -- so maybe this
15 isn't a concern because it's within the framework
16 of the rules.

17 But I just raise these issues because I
18 guess what I'm thinking here is if you enter this
19 order now, are you setting the stage for lots of
20 people to come to you and raise objections that
21 are going to have to be dealt with then? And
22 maybe this is so hypothetical you don't really
23 want to worry about it.

24 THE COURT: No. It's very possible
25 I am. I recognize that given the complexity of

1 this area of law and the lack of familiarity that
2 most of the attorneys in this area are going to
3 have, that there is going to be some uneasiness
4 about moving quickly to file a response. But
5 then the rules allowing amendment are liberal.

6 I certainly can't see denying someone an
7 opportunity to add affirmative defenses that they
8 simply were unaware of at the time. I don't
9 believe that should -- I think what the plaintiffs
10 are really trying to do is get the ball rolling --

11 MR. GASS: Yes.

12 THE COURT: -- and recognizing that
13 there's no guarantee this is going to move things
14 as rapidly as they will want, but it certainly
15 will move things faster than simply letting
16 everything take the normal route because in the
17 normal route, they'd wait until whatever -- file
18 multiple motions to add new parties. We'd wait
19 for pleadings, and then there'd be crossclaims,
20 whether they're needed or not, and counterclaims.
21 And then it might be September, October,
22 November before it's on my calendar for a
23 scheduling conference.

24 And if these issues are going to slow things
25 down, they'll slow things down now rather than

1 later. And I think that makes some sense.

2 Ms. Doyle, do you have anything you wish to
3 add?

4 MS. DOYLE: No, I do not, Your
5 Honor.

6 THE COURT: Okay. I'll go ahead
7 and enter the order then that's --

8 MR. SCHLICKMAN: Your Honor, excuse
9 me. Can I make just one clarification?

10 THE COURT: Yes.

11 MR. SCHLICKMAN: I just want to make
12 sure that there's no doubt about this.

13 What we are asking for is with respect to
14 leave of Court to file and join additional parties
15 without seeking a written motion, we're only
16 seeking that through the date of March 4th. We're
17 seeking that through the time a scheduling order is
18 entered because we are in the process of
19 terminating a number of Standstill and Tolling
20 Agreements. Each of those run for 30 days from
21 the time notice is served before you can actually
22 join the parties. So there may be some parties
23 that slip beyond the 4th.

24 But what we had in mind is that at least the
25 more significant parties and the ones that we can

1 join, if they can file their responsive pleadings
2 by the 24th, then we can meet shortly afterwards --
3 yeah, by the 24th -- and meet shortly afterwards
4 for this initial scheduling conference. We should
5 be in a good position to get many of these issues
6 out on the table that we're talking about here
7 and start trying to deal with them in an organized
8 fashion.

9 THE COURT: Well, that may leave
10 some of those parties, if they're served after the
11 4th, less than 20 days to file an answer. Those
12 are parties I'd likely hear from.

13 MR. SCHLICKMAN: And what we had
14 requested was that the parties that are served
15 by March 3rd or March 4th -- it doesn't matter,
16 one of those two dates -- if they're served by
17 that date, they would respond on the 24th. If
18 they're served after that date, they would just
19 respond in the normal course, again unless the
20 scheduling conference dealt with it in a different
21 way.

22 THE COURT: Okay. Well, why don't
23 you -- did you do a proposed order or do you want
24 to do one?

25 MR. SCHLICKMAN: We will.

1 THE COURT: Why don't you prepare
2 a proposed order, submit it to my proposed
3 mailbox or proposed order mailbox. Provide
4 Mr. Munroe and Ms. Doyle with a copy. Give me --
5 a 24-hour turnaround I'll give you to object.

6 But essentially it's along the lines of what
7 you've asked for here. I don't have -- given the
8 description of the events, I'll certainly allow
9 adding additional parties without further leave.

10 In fact, I'll go ahead and grant your most
11 recent motion today. And I'll direct the Clerk
12 to enter a margin order granting that. So you
13 can add those parties. Others, by March 4th
14 without leave of the Court, or up until, did you
15 say, the scheduling order?

16 MR. SCHLICKMAN: Yes, up until
17 issuance of the scheduling order. We wish --

18 THE COURT: Okay. You may add
19 further parties without leave of the Court up
20 until the issuance of the scheduling order.

21 Parties who are served on or before March 4th,
22 the responsive pleadings are due by March 24th.
23 And then I'll direct that all parties that have
24 appeared then submit -- well, now how do you want
25 to handle the proposed scheduling order?

1 You want a proposed scheduling order by
2 April 14th, and you envision meeting with those
3 parties and then seeing if you can reach agreement?

4 MR. SCHLICKMAN: What we would
5 envision, Your Honor, is sometime before March
6 31st, between March 24th, when we get the
7 responsive pleadings, and then March 31st, we
8 would try to organize an initial meeting of those
9 parties that have appeared to begin discussing
10 the scheduling issues, with the goal of submitting
11 to the Court -- and then the Court could put this
12 in an order if it would prefer that -- that the
13 report on the scheduling conference be submitted
14 by April 14th.

15 As I understand the rules, the 90 day period
16 for issuing the scheduling order would run on
17 April 21st, 90 days after Mr. Munroe filed his
18 appearance.

19 So we could do that. We could schedule it for
20 an actual scheduling conference around that time.
21 But we would be prepared to try to work with the
22 other parties to get you a report on scheduling
23 by April 14th.

24 THE COURT: Okay. I think that
25 makes sense, and then I think it also makes sense

1 to give a scheduling conference date where parties
2 can appear if they wish to be heard on that matter.
3 Given the number of parties, it seems to me that
4 that should probably be a live hearing if we're
5 going to have disputes and --

6 MS. DOYLE: Hello?

7 THE COURT: I'm looking at a
8 calendar, Ms. Doyle. Just a moment.

9 MS. DOYLE: Oh, okay.

10 (Pause)

11 THE COURT: How about April 23rd,
12 9:00 in the morning? Let's make it 9:30.
13 All right?

14 MR. SCHLICKMAN: Yes.

15 MR. GASS: Yes.

16 THE COURT: Okay. I'll look for
17 the proposed order then and issue that. And
18 anything further we can do today?

19 MR. MUNROE: Two clarifications,
20 Your Honor.

21 THE COURT: Yes?

22 MR. MUNROE: Am I correct that my
23 client is included among the parties who have
24 until March 24th to file responsive pleadings?

25 THE COURT: Yes.

1 MR. MUNROE: And where will the
2 scheduling conference take place? You had
3 mentioned the possibility of Milwaukee?

4 THE COURT: I wasn't thinking that
5 quickly. Here for the scheduling purposes. I'm
6 thinking if this matter would go to trial -- and
7 there will be -- I mean, at some point, I don't
8 know -- this would be considered a related case
9 with the one in front of Judge Adelman.

10 See, there's a number of factors here. This
11 would clearly be a case that arises in the division
12 of the District that I'm responsible for. So
13 this case, were it to come to me -- and when I
14 first took office, Judges transferred cases that
15 would have been assigned to me anyhow, subject to
16 a number of exceptions.

17 Now I guess it may depend on how much
18 involvement Judge Adelman has had in the matter,
19 how much he's invested in it, and I don't have a
20 feel for any of those things. So I'm not sure
21 if I will ultimately, even assuming they remain
22 separate, if this would be consolidated there --
23 but in terms of this action right now, the
24 scheduling conference will be here in Green Bay
25 in this courtroom. All right.

1 MR. SCHLICKMAN: Judge, if I can ask
2 you one question, and it's really in terms of an
3 offer. You've probably picked up pretty quickly
4 that there's some jargon associated with this case,
5 OU1, OU2, et cetera.

6 THE COURT: Uh-huh.

7 MR. SCHLICKMAN: Would it be helpful
8 to you to have a non-adversarial, two to three-page
9 backgrounder with maybe the map showing these
10 various units and some of the glossary of terms?

11 THE COURT: Sure. You want to
12 e-file that?

13 MR. SCHLICKMAN: Yes.

14 THE COURT: Yes, that would be
15 great. Everyone would have access to it. And
16 I appreciate it.

17 Okay. Anything further then?

18 MR. SCHLICKMAN: Nothing.

19 THE COURT: All right. Well, have a
20 nice drive or maybe a retreat. Goodbye, Ms. Doyle.

21 MS. DOYLE: Thank you very much.

22 THE COURT: Yes.

23 (Whereupon, at 2:13 p.m., the proceedings
24 were concluded.)

REPORTER'S CERTIFICATION

I, JOHN W. GALES, Notary Public and
Registered Professional Reporter in and for the
State of Wisconsin, certify:

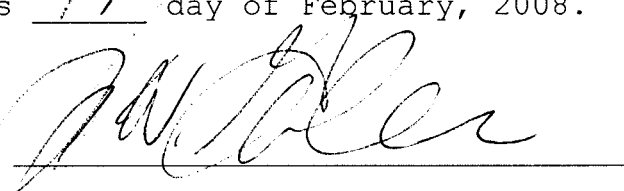
That the foregoing proceedings were recorded
digitally and were thereafter transcribed;

That the foregoing is a true and accurate
record of the proceeding;

I further certify that I am not a relative or
employee of any attorney or any of the parties, nor
financially interested in the action.

I declare under the penalty of perjury under
the laws of the State of Wisconsin that the
foregoing is true and correct.

Dated this 14 day of February, 2008.



JOHN W. GALES

Registered Professional Reporter

Registered Merit Reporter

Notary Public, State of Wisconsin

My commission expires 10/23/2011.